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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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|----------------------------------|---|------------------|
| | : | ECF CASE |
| INDEMNITY INSURANCE COMPANY OF | : | |
| NORTH AMERICA; HARRIS CORP., | : | |
| | : | |
| Plaintiffs, | : | COMPLAINT |
| | : | |
| - against – | : | |
| | : | |
| SEKO GLOBAL LOGISTICS NETWORK | : | |
| KOREA INC.; SEKO WORLDWIDE, LLC; | : | |
| ASIANA AIRLINES, INC. | : | |
| | : | |
| Defendants. | : | |

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Plaintiffs, through their undersigned attorney, allege as follows for their complaint against defendants upon information and belief:

1. The Court has federal question subject matter jurisdiction pursuant to 28 U.S.C. § 1331 as this action involves claims for damage to cargo moving by air from the Republic of Korea (Inchon) to the United States (New York) and arises under a treaty of the United States, the Convention for the Unification of Certain Rules for International Carriage by Air, Done at Montreal on 28 May 1999, reprinted in S. Treaty Doc. No 106-45, 1999 WL 33292734 (2000) (entered into force Nov. 4, 2003) (“Montreal Convention”) and certain amendments, protocols predecessor, and successor treaties thereto in effect in the countries of origin and destination at the time of shipment

and/or as incorporated in the air waybills, charter agreements, and/or other contracts between the parties.

2. The claims in suit otherwise arise under federal law, including federal common law, all within the meaning of 28 U.S.C. § 1331, and/or are supplemental claims within the meaning of 28 U.S.C. § 1367 to certain of the foregoing claims.

3. Plaintiff Indemnity Insurance Company of North America (“IINA”) is a corporation organized under the laws of, and with its principal place of business in, the Commonwealth of Pennsylvania, and sues herein as subrogated cargo insurer having paid part of the claim for the damage to the shipment in suit.

4. This action is also brought for and on behalf of Harris Corp., who was at all material times the consignee and owner of the shipment, to recover its losses in excess of the insurance claim payment by IINA.

5. Defendant Seko Global Logistics Network Korea Inc. and Seko Worldwide, LLC (jointly “Seko”) are believed to be corporations and/or limited liability companies organized under the laws of, and with their principal places of business in, certain of the fifty states and/or foreign sovereigns and were at all material times engaged in the business of providing domestic, interstate and international transportation services, including but not limited to carriage of cargo by air for hire, and provides said services with respect to shipments to, from and through the State of New York.

6. Defendant Asiana Airlines, Inc. (“Asiana”), also doing business as Asiana Airlines and Asiana Cargo Airlines, is believed to be a corporation organized under the laws of, and with its principal places of business in, the Republic of Korea and was at all material times engaged in the business of providing domestic, interstate and international

transportation services, including but not limited to carriage of cargo by air for hire, and provides said services with respect to shipments to, from and through the State of New York.

7. This action involves damage to an eleven-package shipment of test equipment and ground support equipment with a chargeable weight of 8,830 kilograms (hereinafter “the Shipment”) which moved by air from the Incheon, Korea, to New York, NY, with on-carriage by road to Rochester, NY, as described more fully in Seko Global Logistics Korea Inc. Air Waybill SGL1705050 and Asiana Airlines Air Waybill 988 9964 7796 both dated on or about May 26, 2017, and others. [JFK/Rochester B/L Ref.: 007115; Seko Claim # I142006].

8. When the Shipment was received into the custody and control of Defendants, or entities acting on their behalf, at or near Incheon, Korea, it was in good order and condition insofar as is relevant to this action.

9. On or about May 26, 2017 Defendants prepared and issued the aforementioned Air Waybills SGL1705050 and 988 9964 7796.

10. Said Air Waybills were issued “clean”, i.e. stating no exception or notation for damage to the Shipment.

11. When the Shipment was delivered by Defendants at or near New York, NY, it was found to be in damaged condition.

12. The existence of damage to the Shipment was noted on the New York delivery records, including but not limited to the Seko Air Freight Arrival Cartage Advice with Receipt.

13. As a result of the aforesaid damage, and after inspection, segregation and other mitigation steps undertaken by cargo interests, the Shipment could not be used, distributed or sold as intended and therefore had no, or had diminished, commercial value.

14. By reason of the aforesaid Plaintiffs, and those on whose behalf they sue, have sustained damages in the amount of \$150,000.00, as nearly as can be estimated at this time, no part of which has been paid although duly demanded.

15. Plaintiffs sue herein on their own behalf and as agents and trustees for and on behalf of anyone else who may now have or hereafter acquire an interest in this action.

16. Each cause of action asserted herein is pleaded in the alternative.

FIRST CAUSE OF ACTION

Breach of Contract and/or Duties under The Montreal Convention

(Against Seko and Asiana)

17. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 16 of this complaint.

18. By reason of the foregoing defendants breached their duties and obligations under the respective air waybills, charter agreements and/or other contracts, and pursuant to the Montreal Convention (or other applicable air treaty outlined in Paragraph 1) and/or federal common law. Defendants were charged with the duty to provide the care which the nature of the cargo required during all periods of custody, including but not limited to during the period of pre-carriage “build-up” at the place of receipt, during storage prior to and after air transportation, during the course of transportation, and to deliver the Shipment in good order and condition to the agreed

destination to the intended consignee. Defendants failed to do so and therefore are jointly and/or severally liable for the damage to the Shipment.

19. By reason of the aforesaid Plaintiffs have sustained damages in the amount of \$150,000.00, no part of which has been paid although duly demanded.

SECOND CAUSE OF ACTION

Breach of Bailment Obligations

(Against Seko and Asiana)

20. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 16 of this complaint.

21. At the time the aforementioned damage occurred Defendants were acting as bailees of the Shipment and in their own capacities, or through their contractors, agents, servants or sub-bailees, had a duty to safely and properly keep, care for and deliver the Shipment in the same good order and condition as when entrusted to them. Defendants also had a duty to ensure that the services they provided for the Shipment were performed with reasonable care and in a non-negligent and workmanlike manner.

22. Defendants breached their duties and obligations as bailees and negligently delivered the Shipment in damaged and depreciated condition at the agreed destination.

23. By reason of the aforesaid Plaintiffs have sustained damages in the amount of \$150,000.00, no part of which has been paid although duly demanded.

THIRD CAUSE OF ACTION

Negligence and/or Recklessness, and/or Willful Misconduct

(Against Asiana and Seko)

24. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 16 of this complaint.

25. At all material times Defendants had a duty in relation to the Shipment to properly handle, store, build-up, prepare for transit, carry, protect, deliver and care for the cargo in question.

26. The damage to the Shipment was caused by Defendants' negligence, recklessness, wanton neglect, and willful misconduct in that Defendants, their agents, servants, ground-handlers, connecting carriers, subcontractors, terminal operators, truck drivers, warehousemen and employees failed to properly handle, store, build-up, prepare for transit, carry, protect, deliver and care for the cargo in question and in that defendants had no proper and effective procedures to handle, store, build-up, prepare for transit, carry, protect, deliver and care for the cargo.

27. By reason of the aforesaid Plaintiffs have sustained damages in the amount of \$150,000.00, no part of which has been paid although duly demanded.

FOURTH CAUSE OF ACTION

Breach of Contract/Federal Common Law

(Against Asiana and Seko)

28. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 16 of this complaint.

29. By reason of the foregoing, Defendants breached their contract under federal common law, including but not limited to that which applies to the road carriage of the Shipment, and breached their duties under federal common law. The Defendants' conduct in damaging the engine also constitutes a material deviation of its contractual obligations.

30. By reason of the aforesaid Plaintiffs have sustained damages in the amount of \$150,000.00, no part of which has been paid although duly demanded.

WHEREFORE, Plaintiffs demand judgment against Defendants, jointly and severally

- (a) for the sum of \$150,000.00
- (c) for prejudgment interest at the rate of 9% *per annum*;
- (d) for the costs and disbursements of this action;
- (e) for such other and further relief as this Court deems proper and just.

Dated: New York, New York
May 22, 2019

LAW OFFICE,
DAVID L. MAZAROLI

s/David L. Mazaroli

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